



House of Representatives

General Assembly

File No. 562

February Session, 2018

Substitute House Bill No. 5252

House of Representatives, April 18, 2018

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ANTITRUST ACT AND DISCOVERY CONDUCTED BY THE ATTORNEY GENERAL IN WHISTLE-BLOWER AND FALSE CLAIMS ACTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 35-46a of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2018*):

4 In any action brought under subsection (c) of section 35-32 or
5 seeking treble damages under section 35-35, a defendant: [that sells,
6 distributes or otherwise disposes of any drug or device, as defined in
7 21 USC 321, as amended from time to time:]

8 (1) May not assert as a defense that the defendant did not deal
9 directly with the person on whose behalf the action is brought; and

10 (2) May, in order to avoid duplicative liability, prove, as a partial or
11 complete defense against a damage claim, that all or any part of an

12 alleged overcharge [for a drug or device] ultimately was passed on to
13 another person by a purchaser or a seller in the chain of manufacture,
14 production or distribution [of the drug or device] that paid the alleged
15 overcharge.

16 Sec. 2. Subsection (d) of section 4-61dd of the 2018 supplement to
17 the general statutes is repealed and the following is substituted in lieu
18 thereof (*Effective October 1, 2018*):

19 (d) The Attorney General may summon witnesses, require the
20 production of any necessary books, papers or other documents and
21 administer oaths to witnesses, where necessary, for the purpose of an
22 investigation pursuant to this section or for the purpose of
23 investigating a suspected violation of subsection (a) of section 4-275
24 until such time as the Attorney General files a civil action pursuant to
25 section 4-276. Service of a subpoena ad testificandum, subpoena duces
26 tecum and a notice of deposition, may be made by: (1) Personal service
27 or service at the usual place of abode; or (2) registered or certified mail,
28 return receipt requested, a duly executed copy thereof addressed to the
29 person to be served at such person's principal place of business in this
30 state, or, if such person has no principal place of business in this state,
31 at such person's principal office or such person's residence. Upon the
32 conclusion of the investigation, the Attorney General shall where
33 necessary, report any findings to the Governor, or in matters involving
34 criminal activity, to the Chief State's Attorney. In addition to the
35 exempt records provision of section 1-210, the Auditors of Public
36 Accounts and the Attorney General shall not, after receipt of any
37 information from a person under the provisions of this section or
38 sections 4-276 to 4-280, inclusive, disclose the identity of such person
39 without such person's consent unless the Auditors of Public Accounts
40 or the Attorney General determines that such disclosure is
41 unavoidable, and may withhold records of such investigation, during
42 the pendency of the investigation. All documentary material or other
43 information furnished to the Attorney General, his or her deputy or
44 any assistant attorney general designated by the Attorney General,
45 pursuant to a demand issued under this subsection for the purpose of

46 investigating a suspected violation of subsection (a) of section 4-275,
47 shall be returned to the person furnishing such documentary material
48 or other information upon the termination of the Attorney General's
49 investigation or final determination of any action or proceeding
50 commenced thereunder.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	35-46a
Sec. 2	<i>October 1, 2018</i>	4-61dd(d)

Section 1	<i>October 1, 2018</i>	35-46a
Sec. 2	<i>October 1, 2018</i>	4-61dd(d)

Statement of Legislative Commissioners:

The title was changed.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill expands eligibility to pursue damages under current antitrust law. To the extent that the Office of the Attorney General is able to recover additional damages on behalf of the state there is potential for increased revenues.

The potential increased revenue is limited by several factors, including prevalence of antitrust activity and availability of resources within the Office of the Attorney General to pursue additional cases.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5252*****AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ANTITRUST ACT AND DISCOVERY CONDUCTED BY THE ATTORNEY GENERAL IN WHISTLE-BLOWER AND FALSE CLAIMS ACTIONS.*****SUMMARY**

This bill allows purchasers who did not buy directly from a defendant (“indirect purchasers”) to recover for antitrust violations by any type of defendant, not just those that sell or distribute drugs or medical devices (“drug manufacturers”). As under current law for drug manufacturers, it allows defendants to avoid duplicative liability if they can prove that the alleged overcharge was passed on by someone else.

The bill also:

1. expands the allowable methods of service when the attorney general issues subpoenas or deposition notices in whistleblower or False Claims Act investigations (see BACKGROUND) and
2. requires the attorney general’s office to return documents it obtains through a False Claims Act subpoena at the conclusion of the investigation or lawsuit.

EFFECTIVE DATE: October 1, 2018

§ 1 — ANTITRUST CASES BY INDIRECT PURCHASERS

The bill makes two related changes concerning antitrust cases. Under current law, these provisions only apply to antitrust cases against drug manufacturers.

It allows indirect purchasers to recover against the defendant for an

antitrust violation. The bill does so by prohibiting a defendant from raising the defense that it did not deal directly with the person on whose behalf the case was brought.

But the bill allows a defendant, in order to avoid duplicative liability related to an alleged overcharge, to prove that all or part of the overcharge was passed on by someone else in the chain of manufacture, production, or distribution. The defendant may attempt to prove this as a partial or complete defense.

The bill applies to antitrust cases brought by the attorney general in the name of the state as “*parens patriae*” on behalf of (1) particular state residents (including class actions) or (2) the state as a whole or a political subdivision of it. It also applies to cases seeking treble damages for alleged antitrust violations that damaged the business or property of the state or any person, including a consumer.

§ 2 — WHISTLEBLOWER AND FALSE CLAIMS ACT SUBPOENAS

Existing law allows the attorney general, when investigating a suspected violation of the whistleblower law or False Claims Act, to summons witnesses or require someone to produce documents. Under the bill, the attorney general may serve such a subpoena to testify or produce documents or a deposition notice in the following ways:

1. personal service or service at the person’s usual residence or
2. registered or certified mail, return receipt requested, with a duly executed copy addressed to the person to be served at his or her principal place of business in the state, or, if none, at the person’s residence or principal office.

Currently, such documents must generally be served through personal service at the person’s home or place of business.

Under the bill, if a person provides the attorney general’s office with documentary material and other information through a subpoena related to a False Claims Act investigation, the office must return the

documents to the person after (1) the attorney general completes his investigation or (2) the final determination of any related action or proceeding.

BACKGROUND

Whistleblower Law

The state's primary whistleblower law allows anyone to report specific kinds of state agency, quasi-public agency, or large state contractor misconduct to the auditors of public accounts, for possible investigation by the attorney general (CGS § 4-61dd). There are other whistleblower laws not affected by this bill (see CGS §§ 31-51m and 31-51q).

False Claims Act

Under the False Claims Act, the attorney general may investigate fraud related to certain state-administered health or human services programs (CGS § 4-274 et seq.).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (04/02/2018)